
Chapter 2 Origin and Evolution of the WTO

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2.1 Introduction

2.1.1 Paris Convention for the Protection of Industrial Property (1883)

Established in 1883, the Paris Convention for the Protection of Industrial Property covers a wide range of intellectual property categories, including trade names, utility models, patents, trademarks, industrial designs, and geographical indications. In the past, Prince Albert proposed that inventions should be protected internationally at the Great Exhibition in 1851.⁶⁵

The Vienna Congress of 1873, which coincided with the Vienna International Exposition, was the first notable international conference on IPRs. While developing and least-developed countries faced diverse obstacles, developed nations at this time were primarily focused on scientific and technological progress. Manufacturers and inventors objected against the Austrian Patent Law of 1852 in the United States, where technological innovation was more noticeable, because they felt it did not provide sufficient protection for foreign innovators.⁶⁶ A special statute for the temporary protection of goods displayed at the Vienna Exhibition was drafted by the Austro-Hungarian government in response to these concerns, and this led to the Paris Conference of 1878.⁶⁷ During this Conference, the government was asked to support the formation of a Permanent Committee to provide guidance on new proposals and to create standard intellectual property laws.⁶⁸

Thirty-five nations sent delegates to the inaugural Diplomatic Conference in Paris in 1880, but none of them had the power to bind their governments to an agreement. The attending delegates didn't agree on a finalised document that allowed for last-minute changes until the second Diplomatic Conference in 1883, which was presided over by the French Minister of Foreign Affairs. El Salvador, Guatemala, and Brazil from South America and Belgium, France, Italy, the Netherlands, Portugal, Serbia, Spain, and Switzerland from Europe ultimately joined the Convention.⁶⁹

⁶⁵ Professor Michael Blakeney WIPO National Seminar on Intellectual Property, Lecture Prepared by, Queens University London, *available at* https://www.wipo.int/edocs/mdocs/arab/en/2003/ip_cai_1/pdf/wipo_ip_cai_1_03_2.pdf (last visited on November 12 2018)

⁶⁶ *Ibid*

⁶⁷ Professor Michael Blakeney WIPO National Seminar on Intellectual Property, Lecture Prepared by, Queens University London, *available at* https://www.wipo.int/edocs/mdocs/arab/en/2003/ip_cai_1/pdf/wipo_ip_cai_1_03_2.pdf (last visited on November 12 2018)

⁶⁸ G.H.C Bodenhausen, Guide to the Application of the Paris Convention for the Protection of Industrial Property *available at* <https://www.wipo.int/publications/en/details.jsp?id=239> (last visited on June 21 2018)

⁶⁹ Professor Michael Blakeney WIPO National Seminar on Intellectual Property, Lecture Prepared by, Queens University London, *available at*

The 1883 Paris Convention provides for three main principles:⁷⁰

- National Treatment
- Right of Priority
- Common Rules

National Treatment

According to Article 2(1)⁷¹ of the Paris Convention, each Contracting State is required to provide the same degree of intellectual property protection to nationals of other Contracting States as it does to its own citizens. This is known as the principle of National Treatment. Additionally, this principle extends to nationals of Non-Contracting States if the IP owner is domiciled in or has a substantial industrial or commercial establishment in a Contracting State (Article 3).⁷²

Right of Priority

Trademarks, Industrial Designs, and Patents are all subject to the Right of Priority. This provision allows an applicant to file subsequent applications in other Contracting States to the Paris Convention within a specific time frame after filing the initial application in their home country. The time frame is six months for trademarks and industrial designs and twelve months for Patents.⁷³ These subsequent applications are treated as if they were filed on the same date as the first application, provided they pertain to the same subject matter.⁷⁴

Common Rules: The Paris Convention establishes common rules for several categories of intellectual property, like Patent, Trademark, Industrial Design, etc.

Patents: A patent grants an individual or company exclusive rights to an invention that includes an inventive step and has industrial applicability. All Contracting States are required by the Paris Convention to identify the inventor by name (Article 4ter).⁷⁵ The Convention also

https://www.wipo.int/edocs/mdocs/arab/en/2003/ip_cai_1/pdf/wipo_ip_cai_1_03_2.pdf (last visited on November 12 2018)

⁷⁰Paris Convention for the Protection of Industrial Property, 1883 *available at*

http://www.wipo.int/treaties/en/ip/paris/summary_paris.html (last visited at November 10, 2019)

⁷¹ Article 2 (1) of the Paris Convention for the Protection of Industrial Property, *available at*

https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited at November 10, 2019)

⁷² Article 3 of the Paris Convention for the Protection of Industrial Property, *available at*

https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on 10th November 2019)

⁷³ Article 4 of the Paris Convention for the Protection of Industrial Property, *available at*

https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on 10th November 2019)

⁷⁴ *Ibid*

⁷⁵WIPO, Intellectual Property Handbook, *available at*

supports the idea of compulsory licenses, which the government may award just three years after the patent's issuance if an invention is not being manufactured or used to the fullest extent possible.⁷⁶

Marks: Marks are symbols, or combinations of symbols, that are used to distinguish the products or services offered by one business from those of another. There is no standard procedure established by the Convention instead, each Contracting State determines how to file and register marks on its own.⁷⁷ As a result, each State treats intellectual property differently when it comes to mark registration, lapses, and annulments.⁷⁸ On the other hand, upon request, a mark that has been properly registered in its country of origin must be permitted for filing in additional Contracting States. If registering violates the rights of third parties, is immoral, or disrupts public order, it may be refused.⁷⁹ Additionally, the use of marks that lead to misunderstanding or imitation may be forbidden. The Convention provides protection for collective marks.

Paris Convention made it mandatory when the mark create a confusion or imitation or mark used for identical goods, registration may be refused. In that scenario, the use of those marks may also be prohibited.⁸⁰ Collective marks are granted for the protection.

Industrial Designs: Industrial designs represent artistic and creative works, including colors, patterns, lines, shapes, and dimensions. Watches, jewellery, machines, and automobile designs are a few examples.⁸¹ According to the Paris Convention, industrial design protection cannot be revoked because the products are not made in the country.

Trade Names: As required by the Paris Convention, trade names are protected in all Contracting States and do not require filing or registration in each state.⁸²

http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf (last visited on November 10, 2019)

⁷⁶ Article 4bis of the Paris Convention, *available at* https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on November 10 2019)

⁷⁷ Article 6 of the Paris Convention, *available at* https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on November 10 2019)

⁷⁸ Article 6bis of the Paris Convention, *available at* https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last Visited on 10th November 2018)

⁷⁹ WIPO, Summaries of Convention, Treaties and Agreement Administered, *available at* https://www.wipo.int/edocs/pubdocs/en/intproperty/442/wipo_pub_442.pdf last visited on November 10, 2019)

⁸⁰ Article 11 of the Paris Convention for the Protection of Industrial Property, 1883 *available at* http://www.wipo.int/treaties/en/ip/paris/summary_paris.html (last visited at November 10, 2019)

⁸¹ Module VI Industrial Design and Layout Designs of Integrated Circuit by WIPO, *available at* https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules6_e.pdf (last visited at December 1, 2019)

⁸² Art. 8 *Paris* Convention for the Protection of Industrial Property, 1883 *available at* http://www.wipo.int/treaties/en/ip/paris/summary_paris.html (last visited at December 1, 2019)

Indication of Sources : A source indicator is a label applied to goods that have a particular geographic origin and attributes or a reputation associated with it. In order to safeguard both dealers and customers, the Convention mandates that every State pass legislation prohibiting any actions that could endanger such products.⁸³

Unfair Competition: Each State must provide a platform for a fair competition and effective protection against unfair competition.⁸⁴ This has been stated under Article 10*bis* of the Convention⁸⁵ which prohibits the activities like false allegation, false indication source or false allegation on brand.

The Paris Convention was established in 1883, revised in 1900 at Brussels, again in Washington in 1911, again at The Hague in 1925, at London in 1934, at Lisbon in 1958 and last at Stockholm in 1967.⁸⁶

2.1.2 Berne Convention for the Protection of Literary and Artistic Work (1886)

Berne Convention dealt with the Protection of literary works and right of the authors. The Berne Convention is based on three basic principles which seeks for giving minimum protection to authors along with the special provision for the developing countries and how they can use it⁸⁷. The three main principles are first, works originating in the Contracting State should be given the same protection as it grants to its own nationals. Second, protection should not be conditional upon compliance with any formality. Third, protection is independent of the existence of protection in the country of origin. If a Contracting State provides for a longer term of protection than minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied.⁸⁸ The Appendix to the Paris Act of the Convention allows developing countries to implement non-voluntary licenses for translation and reproduction of work in certain cases in connection with educational activities.

⁸³Art. 10*Paris* Convention for the Protection of Industrial Property , 1883 *available at* http://www.wipo.int/treaties/en/ip/paris/summary_paris.html (last visited at December 1, 2019)

⁸⁴Art. 10*bis Paris* Convention , 1883 *available at*http://www.wipo.int/treaties/en/ip/paris/summary_paris.html) (Last visited at November 10, 2018)

⁸⁵Article 10 (1) of the Paris Convention for the Protection of Industrial Property 1883.*available at* https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (last visited on December 1, 2019)

⁸⁶Professor Michael Blakeney WIPO National Seminar on Intellectual Property, Lecture Prepared by, Queens University London, *available at* https://www.wipo.int/edocs/mdocs/arab/en/2003/ip_cai_1/pdf/wipo_ip_cai_1_03_2.pdf (last visited on December 1, 2019)

⁸⁷Berne Convention 1886 under WIPO administered Treaties, *available at* http://www.wipo.int/treaties/en/ip/berne/summary_berne.html (last visited on December 1, 2019)

⁸⁸ Berne Convention 1886 under WIPO administered Treaties, *available at* http://www.wipo.int/treaties/en/ip/berne/summary_berne.html (last visited on December 1, 2019)

2.1.3 Madrid Agreement Concerning the International Registration of Marks, 1891

The Madrid Agreement of 1891 deals with Trademark. Trademarks are territorial rights which Madrid Agreement proposed to change it, by having one institution for registering and managing worldwide.⁸⁹ So an individual can file for an application under the Madrid System and receive protection of his trademark in all Contracting States of the Madrid Agreement.

The Madrid System came up with two part agreement which is the Madrid Agreement (1891) and Madrid Protocol (1989). The entire aim of the Madrid Agreement was about promoting trademark and protecting the identity of business attached with its Trademark, and with time there were some loopholes and for overcoming those the Madrid Protocol was developed.⁹⁰ Both of these system are administered by WIPO.

2.2 World Intellectual Property Organisation

United International Bureaux for the Protection of Intellectual Property (BIRPI), founded in 1893, was the forerunner of the WIPO. With its main office located in Berne, Switzerland, BIRPI was established to supervise the implementation of the Paris and Berne Conventions.⁹¹ The WIPO Convention was signed in Stockholm on July 14, 1967; it became operative in 1970 and was later revised in 1979. The WIPO Convention is the foundational text of WIPO. In 1974, WIPO was designated as a special agency of the UN.⁹² WIPO's two main goals are to encourage the worldwide protection of intellectual property and to ensure administrative cooperation among the intellectual property unions established by the Treaties WIPO administers.⁹³

2.2.1 WIPO's Operations

WIPO takes part in a number of initiatives to meet its objectives. Known as normative activity, it creates and upholds IPR for international treaties.⁹⁴ WIPO also conducts programmatic operations and provides member states with legal and technical support pertaining to IPRs.

⁸⁹ Summary of the Madrid Agreement by WIPO, *available at* https://www.wipo.int/treaties/en/ip/madrid/summary_madrid_source.html (last visited on December 1, 2019)

⁹⁰ Madrid Application – A One Stop solution for International Registration of Trademarks – Priyank Khandelwal, *available at* <https://www.lexology.com/library/detail.aspx?g=cab7a89e-370b-45d5-8e3c-356c5c44a22b> (last visited on December 1, 2019)

⁹¹ Convention Establishing the World Intellectual Property Organisation by WIPO *available at* <https://www.wipo.int/about-wipo/en/history.html> (last visited on December 1, 2019)

⁹² Summary of the Convention Establishing the World Intellectual Property Organisation (WIPO) (1967) by WIPO, *available at* https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html (last visited on December 1, 2019)

⁹³ *Ibid*

⁹⁴ WIPO, Convention Establishing the World Intellectual Property Organisation by WIPO *available at* <https://www.wipo.int/about-wipo/en/history.html> (last visited on December 1, 2019)

Through cooperation among national intellectual property agencies, it also makes international classification and standardisation efforts easier. WIPO also oversees the filing and registration of different intellectual properties.⁹⁵

2.2.2 WIPO Organisational Structure

The three primary entities of WIPO are the WIPO Coordination Committee, the WIPO Conference, and the WIPO General Assembly.

WIPO General Assembly: Nominations for the Director General come from the Coordination Committee, and members of this assembly choose the organization's representative. Members examine and accept reports from the Coordination Committee and the Director General. They also approve the organization's and the unions' financial budget.⁹⁶

WIPO Conference: This body, which is made up of WIPO Convention States Parties, is in charge of approving Convention changes.⁹⁷

WIPO Coordination Committee: Members of this committee are chosen from the Paris Union Executive Committee and the Berne Union Executive Committee. It provides administrative and financial guidance to the Director General, the General Assembly, the Conference, and the unions' organisations.⁹⁸

2.2.3 Evolution of the Patent Cooperation Treaty

The WIPO came up with the idea for the Patent Cooperation Treaty (PCT) in 1978. In addition to helping patent offices with their choices regarding patent issuance, PCT supports applicants seeking protection for their inventions abroad and makes a plethora of technical information about those inventions accessible to the general public.⁹⁹ The ability to file a single "international" patent application rather than multiple separate national or regional patent

⁹⁵ WIPO, Summary of the Convention Establishing the World Intellectual Property Organisation (1967) , available at <https://www.wipo.int/treaties/en/convention/> (last visited on December 1, 2019)

⁹⁶ Ibid

⁹⁷ WIPO, Summary of the Convention Establishing the World Intellectual Property Organisation, available at <https://www.wipo.int/treaties/en/convention/> (last visited on December 1, 2019)

⁹⁸ Ibid

⁹⁹ WIPO, PCT –The International Patent System, available at <https://www.wipo.int/pct/en/> (last visited on December 12, 2019)

applications allows for the simultaneous pursuit of patent protection for an innovation across multiple nations, which is one of PCT's features.¹⁰⁰

2.2.4 The WIPO Arbitration and Mediation Centre was founded in 1994.

Business and legal problems pertaining to intellectual property (IP) have developed in tandem with the growth of IP rights. In order to address this, WIPO established an Arbitration and Mediation Centre in Singapore in 1994, branching out from its Geneva headquarters.¹⁰¹ This centre addresses two categories of problems:

Contractual Disputes: These cover things like coexistence agreements for trademarks, distribution agreements, research agreements, and licences for software and patents.

Non-Contractual Disputes: These mostly include lawsuits alleging patent infringement. The United States, India, France, Italy, Japan, Panama, Spain, and the United Kingdom are among the nations that have made use of these services.¹⁰²

In 1998, the WIPO Academy was established to offer both general and specialized intellectual property courses. These courses take an interdisciplinary approach and are designed to cater to a broad spectrum of IP professionals.

2.3 Historical Background: The Evolution of the World Trade Organization

The Regulation of International Trade after the Two World War had become very difficult between the nations. The General Agreement of Tariff and Trade (GATT) helped in losing the tension between nations and help built trade between nations. The Negotiation rounds were made under GATT and Tariff reduction were agreed between nations. Originally, the plan was the GATT was to be a part of the Havana Charter for an International Trade Organization that was negotiated during the United Nation Conference on Trade and Employment held in Cuba from 21st November 1947 to 24th January 1948, the GATT 1947 was applied through a Protocol of Provisional Application.¹⁰³ Since the Havana Charter never came into force, the GATT 1947 remained provisionally in force until its provisions were absorbed by WTO Agreement.¹⁰⁴

¹⁰⁰ WIPO, Protecting your Invention Abroad: Frequently asked question about the Patent Cooperation Treaty *available at* <https://www.wipo.int/pct/en/faqs/faqs.html> (last visited on December 12, 2019)

¹⁰¹ WIPO, Summary of the Convention Establishing the World Intellectual Property Organisation, *available at* <https://www.wipo.int/treaties/en/convention/> (last visited on December 12, 2019)

¹⁰² WIPO, WIPO Arbitration and Mediation Centre, *available at* <https://www.wipo.int/amc/en/center/background.html> (last visited on December 12, 2019)

¹⁰³ WTO, GATT and Goods Council by WTO, *available at* https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm (last visited on December 12, 2019)

¹⁰⁴ Final Act of the United Nations Conference on Trade and Employment by International Commission for the internal Trade Organisation April 1948 *available at* https://www.wto.org/english/docs_e/legal_e/havana_e.pdf (last visited on December 12, 2019)

2.3.1 General Agreement on Tariffs and Trade

GATT was signed on October 30, 1947 by 23 Countries it was a legal agreement minimizing barriers to international trade by reducing tariffs between the member nations.¹⁰⁵ Eight rounds of GATT were discussed from April 1947 December 1993 each with significant outcomes.¹⁰⁶ In the end, GATT was absorbed by the World Trade Organization on 1st January 1995 and the member nations of WTO became member of GATT as well.

The only GATT provision that specifically promotes the protection of Intellectual Property was stated under Article IX: 6 on the protection of the distinctive regional or geographical names which did not set any standards, as it was more depended on the member to cooperate with each other for its protection.¹⁰⁷

Table 2.1 GATT Trade Rounds ¹⁰⁸

Table 2.1

| Year | Place/Name | Subjects covered |
|------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1947 | Geneva | Oct 30 , “GATT” was signed by 23 Countries at Geneva’s Palais Des Nations after first ever trade round. |
| 1949 | Annecy | The First round negotiation supervised by GATT was held at French Lakeside in the city of Annecy and 13 State Members agreed 5,000 tariff concession |
| 1951 | Torquay | This round was held between September 1950 and April 1951, 38 Members had participated and exchanged 87,000 tariff concession which resulted in reducing tariff by almost 25% from that of 1948. |

¹⁰⁵ Chritinia Majaski, GATT available at <https://www.investopedia.com/terms/g/gatt.asp> (last visited on December 12, 2019)

¹⁰⁶ Adrian Otten, The TRIPS negotiation : An Overview, available at https://www.wto.org/english/res_e/booksp_e/trips_agree_e/chapter_3_e.pdf (last visited on December 19, 2019)

¹⁰⁷ Ibid

¹⁰⁸ The GATT years: from Havana to Marrakesh, by WTO available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (last visited on December 19, 2019)

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|-------------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1956 | Geneva | This round was completed in May, 1956 and 26 Countries had participated in it. Tariff reductions worth \$2.5 Billion were exchanged. |
| 1960 - 1961 | Dillon Round | The Dillon was named after U.S. undersecretary of State Douglass Dillon, the round was basically a follow up round of Geneva Round, involving the same members but a new perspective harmonizing concession within the European Economic Community. It was completed in July 1962 and tariff concession covering \$4.9 Billion of trade were signed by 26 countries. |
| 1964 - 1967 | Kennedy Round | Named after the US President John F. Kennedy and was held in Geneva. The highlight of the round was that it had increased the scope of GATT Agreements in which Tariffs and anti-dumping measures were taken into account. The final account was signed in June 1967 by 62 Countries which represented a total 75% of World Trade. Tariff Reduction worth \$ 40 Billion were exchanged |
| 1973 - 1979 | Tokyo Round | It was round at the Ministerial level Tariffs conducted at Tokyo, but then shifted to the GATT Headquarter, Tariff worth \$300 Billion were exchanged. |
| 1986 - 1994 | Uruguay Round | The most ambitious and last round of GATT, bringing new concepts into it, like Agriculture and IPR. This round was the longest ever round in GATT as various negotiations took place like Tariffs Measures, Non-Tariff Measures, Rules, Services, Intellectual Property, Dispute Settlement, Textiles, Agriculture, and idea of establishment of WTO ¹⁰⁹ |

¹⁰⁹WTO, The GATT years: from Havana to Marrakesh, *available* at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm (last visited on December 19, 2019)

2.3.2 GATT Uruguay Round

The Uruguay Round was supposed to span four years, but it ended up lasting almost twice as long and involving 123 countries. This round of trade included a wide range of topics, from luxury boats to toothbrushes, banking to telecommunications, and even the genetic makeup of wild rice and medical treatments.¹¹⁰ Under the GATT, it was one of the biggest and longest trade discussions ever. One of the main draws for many countries was the emphasis on IP protection.

At first, fresh talks were supposed to begin, but differences over agriculture caused the process to stall. Ministers finally agreed to meet again in September 1986 at Punta del Este,¹¹¹ Uruguay, but it took another four years of painstaking issue clarity and agreement building. Two years later, ministers met again in Montreal, Canada, where they made early progress towards early results. These included agreements to expedite the dispute settlement and trade policy review systems, as well as concessions on tropical crops to benefit poor countries. These agreements led to the first comprehensive, systematic reviews of national trade policies and practices among GATT members.¹¹²

Japan and the United States were the primary advocates of adding intellectual property in the negotiations during the initial stages of the Uruguay Round. In order to preserve its intellectual property, the United States, with its strong economy, aimed to expand IP protection internationally. But developing nations objected to this addition, arguing that GATT should only be about products and that IP protection would benefit wealthy countries, which possessed the majority of patents and intellectual property.

Technological advancement persisted in spite of political obstacles. In December 1991, the Final Act was written and discussed in Geneva under the direction of GATT Director-General Arthur Dunkel.¹¹³ All of the Punta del Este negotiations were included in this draft, with the exception of the promises to lower import taxes and open service markets.¹¹⁴

¹¹⁰WTO, The Uruguay Round , *available* at (https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm) (last visited on December 19, 2019)

¹¹¹Ibid

¹¹² WTO, The Uruguay Round , *available* at (https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm) (last visited on December 19, 2019)

¹¹³ Ibid

¹¹⁴ The Centre for Internet and Society, Intellectual Property Rights and TRIPS : An Overview, *available* at (<https://cis-india.org/a2k/blogs/intellectual-property-rights-trips-an-overview>) (last visited on December 19, 2019)

Though less successful than expected, negotiations continued over the course of two more years, addressing a number of additional difficulties as they emerged. Most problems with market access and services had been fixed by December 15, 1993. Ministers from the majority of the 123 participating States signed the final agreement in Marrakesh, Morocco, on April 15, 1994. 115

The Uruguay Round was facilitated in large part by the combined advantages of IP protection and tariff reductions for industrialised nations. The prolonged negotiations had benefits, enabling in-depth talks about IPRs and ultimately resulting in the establishment of the World Trade Organisation.

Table 2.2 Uruguay Round Date

Table 2.2

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| <p>September 1986- Punta Del Este: The round was launched with agreement on Ministerial Declaration. The TRIPS mandate appeared as one of the subjects for negotiation in Part 1 of the Declaration dealing with trade in goods.¹¹⁶</p> |
| <p>December 1988 - Montreal: A midterm mid review was held at the ministerial level in December 1988. The Meeting in Montreal was a tense affair but not in relation matter of TRIPS issue.</p> |
| <p>April 1989 - Geneva: Mid-term review completed</p> |
| <p>December 1990 - Brussels: The Ministerial meeting ended with dead-end. In relation to issue of TRIPS frequent meetings started taking place between the Countries and Chair of the Trade Negotiation Committee (TNC), which was headed by Arthur Dunkel, for which the chair used 5+5 group with variable membership (5 developed countries and 5 developing countries) after the meetings the Chair made a detailed report of the meetings which were made available in writing to ensure transparency and give all participants an opportunity to react. The end result was forwarded so that it can be included in the Dunkel Draft¹¹⁷</p> |

¹¹⁵WTO, The Uruguay Round, *available at* (https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm) (last visited on December 21, 2019)

¹¹⁶ Ibid

¹¹⁷Adrian Otten, The TRIPS negotiation : An Overview by, *available at* https://www.wto.org/english/res_e/booksp_e/trips_agree_e/chapter_3_e.pdf, (last visited on December 21, 2019)

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| December 1991 - Geneva: Dunkel Draft was submitted ¹¹⁸ |
| November 1992 - Washington: United States (US) and European Union (EU) achieve “Blair House” breakthrough on agriculture. ¹¹⁹ |
| July 1993 - Tokyo: Quad (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects. |
| December 1993 -Geneva: Majority negotiations end still some market access talks remain |
| April 1994 - Marrakesh: The Member Nations agreed upon setting up Legal and Institutional foundations attached to it as much lengthier set of four annexes. ¹²⁰ Under which 1Cof Annex 1 talked in detailed about the Agreement on Trade-Related Aspects of IPRs. Annex2 sets the rules and procedure for the dispute settlement. Annex 3 provides for regular reviews of developments and trends in national and international trade policy. Annex 4 covers four “plurilateral” agreements which are within the WTO framework but which have limited membership. ¹²¹ |
| January 1955—Geneva : WTO created , Agreements take effect |

2.4 The World Trade Organization: Establishment and Functioning

The World Trade Organisation was established on 1st of January of 1995 which marked the biggest reform of the International Trade. Whereas, the GATT mainly dealt with trade in goods, the WTO and its agreements covers Trade in Services, Intellectual Property and also created a Dispute Settlement Center.¹²²One can say that it is economy building document / contract, as the main goal is development of the economy as well as self-development.

The Secretariat is located in Geneva. All the decisions in the WTO are generally taken by consensus of the entire membership.¹²³ The highest in hierarchy is the Ministerial Conference

¹¹⁸ WTO, The Uruguay Round, *available* at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm (last visited on December 21, 2019)

¹¹⁹ *Ibid*

¹²⁰ WTO, The WTO Agreement Series, *available* at https://www.wto.org/english/res_e/booksp_e/agrmntseries1_wto_e.pdf (last visited on December 21, 2019)

¹²¹ Adrian Otten, The TRIPS negotiation : An Overview, *available* at https://www.wto.org/english/res_e/booksp_e/trips_agree_e/chapter_3_e.pdf (last visited on December 21, 2019)

¹²² WTO, Understanding the WTO, (WTO information and External Relations Division, 5th Edition,2015) *available* at https://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf (last visited on December 21, 2019)

¹²³ WTO, Overview of WTO, *available* at (https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm)

which meets once in every two years and the next in hierarchy which the General Council runs the entire business.

2.4.1 Principles of WTO

The WTO still bases its operations on a set of established principles. Trade without discrimination, which is represented in the notion of MFN treatment, is one of the core concepts. It is required under this principle that all members treat each other fairly in economic interactions.¹²⁴

According to this principle, trade relations between all WTO members must be conducted impartially and without discrimination. It highlights the following elements:

- Trade ought to be carried out without bias.
- The goal of negotiations should be to remove trade restrictions.
- Maintaining market stability is essential to attracting foreign investment.
- The WTO seeks to eliminate unfair business practices like export subsidies and predatory pricing and to encourage healthy competition.
- To help developing nations integrate into the global economy, special measures are provided for them, giving them more leeway and longer deadlines to abide by WTO accords.

The concept of MFN treatment originated from the GATT, where it was initially codified as the first article. This principle remains central in other WTO agreements, including the GATS under Article 2 and the TRIPS under Article 4.¹²⁵ Given the wide range of economic circumstances among its members, the WTO permits specific exemptions and special rules. For example, free trade agreements can be formed between developing and least-developed nations.¹²⁶ Additionally, under very strict guidelines, they could erect trade barriers to safeguard their economic interests against what they believe to be unfair trade practices by other nations. To guarantee adherence to WTO regulations and advance fair trade practices worldwide, these agreements are subject to strict requirements. It is against the law to

(last visited on December 21, 2019)

¹²⁴ WTO, Principles of Trading System, *available at* https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#seebox (last visited on December 21, 2019)

¹²⁵ *Ibid*

¹²⁶ WTO, Overview of WTO, *available at* (https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm) (last visited on December 21, 2019)

discriminate in trade practices, and discussions seek to lower obstacles in order to guarantee a stable market.

Additionally, the WTO promotes fair competition and opposes unfair business practices including export subsidies and predatory pricing. Developing nations are granted more time to adhere to WTO accords, as well as specific considerations and flexibilities to aid in their integration into the global economy.¹²⁷

2.4.1.1 National Treatment

Under this principle, member nations are required to treat imported goods and domestically produced goods equally. If a government favours domestic products over foreign ones in the home market, then lowering tariffs and other barriers becomes meaningless. All three of the main WTO agreements—Article 3 of GATT, Article 17 of GATS, and Article 3 of TRIPS contains a clause known as the Principle of National Treatment, which guarantees that imported goods are treated the same as domestic goods.¹²⁸

2.4.1.2 Non-Discrimination

This principle mandates that a country must treat all other countries, their products, services, and nationals equally and fairly, without discrimination.¹²⁹

2.4.1.3 More Open to do business

By effectively lowering trade barriers and tariffs, the WTO actively advances global trade. Member states engage in trade negotiations only when there are mutually beneficial opportunities. The WTO has also done away with selective trade quotas, which used to limit particular amounts of products.¹³⁰

2.4.2 Objectives of WTO

The WTO's preamble, which was created at the end of the Uruguay Round, lists its goals. These goals are wide-ranging and include:¹³¹

¹²⁷ Ibid

¹²⁸ WTO, Overview of WTO, available at (https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm) (last visited on December 21, 2019) See also The WTO agreement series -Agreement Establishing the WTO ,by WTO available at https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf (last visited on January 13, 2020)

¹²⁹ WTO, The WTO agreement series -Agreement Establishing the WTO, *available at* https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf (last visited on January 13, 2020)

¹³⁰ Ibid

¹³¹ WTO, The WTO agreement series -Agreement Establishing the WTO , *available at* https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf (last visited on January 13, 2020)

- Enhancing standards of living: The WTO aims to improve living conditions globally.
- Ensuring full employment: It aims to encourage stable and new job growth.
- Increasing trade and production: The WTO promotes trade expansion as a means of fostering economic growth.
- Making the most use of global resources: Efforts are undertaken to make the most use of global resources.
- Encouraging sustainable development: One of the main objectives is sustainable economic growth.
- Ensuring the involvement of developing countries: It acknowledges the significance of including developing and least-developed nations into international trade, making sure that their involvement aligns with their need for economic development.¹³²

2.4.3. The Role of WTO

- Trade Negotiations: The WTO facilitates negotiations covering all aspects of international trade, including goods, services, and intellectual property. Lowering tariffs, removing trade restrictions, and addressing other trade-related issues are the goals of these conversations. WTO members evaluate their agreements on a regular basis and amend them as needed.
- Implementation and Monitoring: WTO agreements mandate transparency in trade laws, requiring members to notify the WTO of any changes. Different WTO councils are in charge of ensuring that these rules are followed. Members are required to examine their trade policies and practices on a regular basis and to align their legal frameworks with WTO requirements.¹³³
- Dispute Settlement: The WTO's Dispute Settlement Mechanism is used to resolve disputes arising amongst its members. Based on WTO agreements and the commitments of individual countries, independent experts evaluate cases and render decisions appropriately.¹³⁴
- Building Trade Capacity: In recognition of the difficulties developing countries have in fulfilling WTO requirements, the organisation offers technical support and specific allowances. Projects aimed at addressing changing demands, technological

¹³² WTO, The WTO agreement series -Agreement Establishing the WTO, *available at* https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf (last visited on January 23, 2020)

¹³³ WTO, Understanding the WTO, what we do, *available at* https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm (last visited on January 27, 2020)

¹³⁴ *Ibid*

breakthroughs, and political shifts that impact commerce are examples of this type of technical collaboration. In order to improve government officials' trade-related capacities, the WTO also holds multiple training sessions in Geneva each year.¹³⁵

2.5 Dispute Settlement Mechanism

In trade disputes may arise due to any reasons. The WTO members have agreed that if members are violating any rules they will use the multilateral trading system for settling disputes. GATT did have procedure for settling disputes but did not have a fix time-lines due to which it was not effective. The idea of Dispute Settlement Understanding (DSU) was found in the last round of GATT (Uruguay Round). It is embodied in the Understanding on Rules and Procedures Governing the settlement of Disputes commonly referred to as the DSU. It is embodied under Annex 2 of the WTO Agreement and its sets rules and procedures that govern today's dispute settlement system.¹³⁶

The system is based on the clearly defined rules and time-line for completing a case. First ruling is made by a panel and endorsed (or rejected) by the WTO's full Membership. The point of this system is not to pass the judgement but to settle dispute with consultation if possible.¹³⁷ The Uruguay round introduced a more structured process with more clearly defined stages in the procedure.¹³⁸ Under GATT procedure rulings could be adopted by consensus, meaning that a single objection could block the ruling. Whereas, now new rulings are automatically adopted unless there is consensus to reject a ruling- any country wanting to block a ruling has to persuade all other WTO members to share its view.¹³⁹ The detailed procedure of DSB is discussed in Chapter 6.

2.6 Relation between WTO and WIPO

There is relation between the two organisations WTO and WIPO, one of the main reason was the TRIPS Agreement. To facilitate the implementation of the TRIPS Agreement the Council for the TRIPS concluded with WIPO an agreement on cooperation between WIPO and the WTO, which came into force on 1st January 1996. As explicitly set out in the Preamble to the

¹³⁵ WTO, The WTO agreement series -Agreement Establishing the WTO, *available at* https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf (last visited on January 27, 2020)

¹³⁶ WTO, Introduction to WTO Dispute Settlement System, *available at* https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c1s2p1_e.htm (last visited on January 13, 2020)

¹³⁷ *Ibid*

¹³⁸ WTO, Understanding the WTO: Settling Disputes, *available at* https://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm (last visited on January 13, 2020)

¹³⁹ *Ibid*

TRIPS Agreement, the WTO desires a mutually supportive relationship with WIPO. The Agreement provides cooperation in three main areas, namely notification of, access to and translation of national laws and regulations, implementation of procedures for the protection of national emblems, and technical cooperation.¹⁴⁰

2.7 Conclusion

Intellectual Property has been always being a part of the society and has been evolving through the needs of the mankind. The reason why many of the innovators in earlier era were hesitant to share their Intellectual property was because they feared it would get stolen and some other person he may use it in any other nation and may make profit. This lack of security in the mind of innovators was put to rest through various conventions and agreements made from time to time including the TRIPS Agreement. TRIPS Agreement sets the minimum rules for various types of IPRs. As TRIPS Agreement was a package deal with WTO Membership, the same criteria of TRIPS were applied by all the Member-Nations which gave peace of mind to many innovators that even if their IPRs are violated by people in other nations, they can seek justice through this. The TRIPS Agreement had not only set basic ground rules for Intellectual properties but also set up Dispute Settlement Mechanism to resolve any conflict between nations as well. It was because of the TRIPS agreement that talks between the member nations regarding technology transfer or pharmaceutical aid became successful.

The TRIPS Agreement even though it has been a tool for protecting the IPRs but it subject to review as when needs of the society. Also WIPO on the other hand is also protecting IPRs and is making laws keeping in mind the emerging challenges of the society.

¹⁴⁰WTO, Agreement between the WIPO and WTO, *available at* https://www.wto.org/english/tratop_e/trips_e/intel3_e.htm#:~:text=To%20facilitate%20the%20implementation%20of,mutually%20supportive%20relationship%20with%20WIPO. (last visited on January 13, 2020)